IN THE

Supreme Court of the United States

October Term, 1950

No. 253

Jesse A. Cox,

Appellant,

vs.

L. Dale Coffman, as Dean of the School of Law, University of California at Los Angeles,

Appellee.

JURISDICTIONAL STATEMENT

Jesse A. Cox,
333 Hilgard Avenue,
Los Angeles 24, California,
Appellant in Propria Persona.

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IN THE

Supreme Court of the United States

October Term, 1954

No.....

JOSEPH A. COTA,

Appellant,

vs.

L. DALE COFFMAN, as Dean of the School of Law, University of California at Los Angeles,

Appellee.

JURISDICTIONAL STATEMENT.

I.

Jurisdictional Statement.

Appellant appeals from the Minute Order of the Superior Court of Los Angeles County, Department 34, denying petitioner-appellant's alternative writ of mandate on December 8, 1953; the Minute Order of the Superior Court of February 23, 1954, denying petition and sustaining demurrer without leave to amend; the decision of the District Court of Appeal of the State of California, Second Appellate District, Division Three, to dismiss appeal on December 15, 1954 (petition for rehearing denied Jan. 3, 1955); and the Supreme Court of California's decision to deny hearing on February 10, 1955. Notice of appeal was filed in the Superior Court on April 8, 1955, but

appellant was informed by the District Court of Appeal Clerk's Office that notice should be filed with them so this was done on May 2, 1955.

Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented. Copies of the Minute Orders of the Superior Court are attached hereto in the Clerk's Transcript on appeal from the Superior Court, pages 28 and 66.

II.
Opinion Below.

No opinion was reported when the Superior Court on December 8, 1953, summarily denied appellant's alternative writ of mandate by Minute Order. Petitioner-appellant was not given an opportunity to amend nor a hearing in court. His petition was denied summarily even before an answer, demurrer or any pleading was filed by respondent-appellee. On February 23, 1954, the Superior Court by a written Minute Order denied appellant's amended petition and sustained the demurrer (filed subsequent to the first Minute Order) without leave to amend. No opinions were reported by the District Court of Appeal of the State of California, Second Appellate District, Division Three, and the Supreme Court of the State of California.

III.
Jurisdiction.

This suit was brought to reinstate appellant as a student in the School of Law at the University of California at Los Angeles. Appellant in good faith relied upon Article IX, Section 9 of the Constitution of California as a pro-

tection of his civil rights to freedom of speech and expression believing that appellee could not violate his position of trust by demanding conformance to his political views and racial bigotry without coming into direct conflict with this provision in the State Constitution. However, appellant was left with no protection of his civil rights and beliefs by the surprising and summary denial of his petition for an alternative writ of mandamus in the Superior Court on December 8, 1953, and by the interpretation given the State Constitution by Judge Arnold Prager on February 23, 1954, that the court cannot interfere with the rules established by the regents of the University of California. Such interpretation of the Constitution of California deprived appellant of the protection under the law of his civil and political rights and therefore is in direct violation of the United States Constitution, Amendment XIV, in that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law. Jurisdiction of the Supreme Court of the United States is conferred under Amendment XIV of the United States Constitution.

The jurisdiction of the Supreme Court of the United States to review this decision is also necessary to protect appellant's benefits given him as a veteran under the provisions of the G. I. Bill of Rights (38 U. S. C. 703a and Veterans Regulations, Part VIII, compiled thereunder). These benefits given a veteran under the G. I. Bill should not be removed from the protection of the courts. When the State provides redress to the courts where there has

been an abuse of discretion, abitrary or fraudulent action, then it could conceivably be argued there is no need for Federal court intervention but where, as in the case of appellant, such protection is denied, then appeal to Federal jurisdiction is proper.

Appellant's petition was summarily denied without hearing in the Superior Court of Los Angeles County on December 8, 1953. Appellant thereupon attempted to amend his petition only to have it denied on February 23, 1954. On appeal to the District Court of Appeal of the State of California, the District Court held that a final judgment had been entered against appellant on December 8, 1953, although this had been done summarily and merely on the basis of the points and authorities of appellee (Superior Court Register of Actions entries which is attached shows sequence), without a hearing and without allowing petitioner-appellant to amend his petition. Appellant asserted an invasion of his right to maintain his own political and social points of view as well as the fact that because of appellee's behavior and actions he would lose his veteran's benefits and the opportunity to enter his chosen profession. If the Minute Order of December 8, 1953, is to hold sway along with that of February 23, 1954, which stated that the courts may not interfere with the administration of the University, it is obvious, that at no time did the State provide the appellant a remedy at law. Jurisdiction of the Supreme Court is sustained by the decision in *Brinkerhoff-Faris Trust and Savings Com-*

pany v. Hill (treasurer and *ex-officio* collector of Henry County, Mo.), 281 U. S. 673. As is stated in that case:

> "If the judgment is permitted to stand, deprivation of plaintiff's property (in this case, appellant's freedom of speech and deprivation of his veteran's benefits as well as an equal opportunity to enter his chosen profession) is accomplished without its ever having had an opportunity to defend against the exaction.
>
> "If the result above stated were attained by an exercise of the State's legislative power, the transgression of the due process clause of the 14th Amendment would be obvious. Ettor v. Tacoma, 228 U. S. 148. The violation is none the less clear when that result is accomplished by the State Judiciary in the course of construing an otherwise valid State statute. The Federal guaranty of due process extends to State action through its judicial as well as its legislative, executive or administrative branch of government."

At page 681 it states:

> "Our present concern is solely with the question whether the plaintiff has been accorded due process in the primary sense;—whether it has had an opportunity to present its case and be heard in its support. But while it is for the State courts to determine the adjective law as well as the substantive law of the State, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it."

IV.

Questions Presented.

A. Whether appellee may arbitrarily demand conformance to his political and racial views to the extent that he may deprive appellant of his right to freedom of speech, adherence to his own views and the opportunity to enter his chosen profession.

B. Whether the arbitrary, fraudulent and abusive actions of appellee can escape judicial review by denying petitioner the right of appeal to judicial process under guise and interpretation of a State constitutional provision setting the University of California beyond the jurisdiction of the judiciary; which interpretation does, contrary to the will of the people and Constitutions of the State of California and the United States, make the University a fourth branch of government subject to control neither by the electorate nor by the judiciary. If University authorities may be placed beyond the reach of judicial review by constitutional provision, citizens in the South of colored extraction may be deprived of their education, as has appellant, by the simple method of raising all schools to constitutional level thereby denying court interference, giving colored students low grades and then denying them access, as in the case of appellant, to the results of their examination papers so they may not prove fraud and discrimination.

C. Whether Article IX, Section 9 of the Constitution of California, as interpreted by the Superior Court of the County of Los Angeles, denies a citizen, as it has the appellant, the right of due process or appeal to judicial process where there has been arbitrary or fraudulent action and an abuse of discretion. Whether such inter-

pretation is contrary to Amendment XIV of the United States Constitution as it denies appellant protection of his right of freedom of speech and is contrary to Amendment XIV in that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Appellant in good faith relied upon that portion of Article IX, Section 9 of the Constitution of California which states, "the University shall be entirely independent of all political or sectarian influence." Appellant was threatened and told by appellee that he must conform to appellee's political and social views yet, because he questioned and protested appellee's actions and was, as a result, removed from law school, he is denied records to judicial process because of Article IX, Section 9 and the court's interpretation thereof. The Superior Court of the County of Los Angeles ruled it could not interfere with rules established by the regents of the University and this decision deprives petitioner of the equal protection of law and due process of law.

D. Appellant has exhausted and endeavored to use every method of appeal, including appeal to the Supreme Court of California and the Governor of the State of California as president of the Board of Regents. In so doing, an effort was made to silence both appellant's freedom of speech and his attempts to appeal from appellee's arbitrary and abusive actions by calling appellant's mother in for questioning like a common criminal. Denying appellant the right of due process and equal protection under the law has also constituted a denial to his family of this protection. Question is presented whether such denial is

contrary to the Constitution of the United States, Amendment XIV.

E. Appellant appealed to University authorities only to be met with a discriminatory request that he sign a loyalty oath, something not requested nor required of any student. Appellant did sign the oath although it was requested in a discriminatory manner. Appellant does here clearly and unmistakably state and swear that his devotion to his country, the United States Constitution, American institutions of justice and government has never at any time in his life faltered nor waivered. Question presented is whether requiring petitioner (appellant) to take a loyalty oath not required of other students constituted a discriminatory act toward petitioner (appellant).

F. Because of appellee's arbitrary and abusive actions, appellant did lose a valuable and considerable privilege and benefit granted to him under the provisions of the G. I. Bill of Rights (38 U. S. C. 703a and Veterans Regulations, Part VIII, compiled thereunder). Question presented is whether denying appellant the opportunity to use these valuable privileges and benefits through arbitrary and abusive and fraudulent actions is contrary to the Constitution of the United States, Amendment XIV, which states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law."

G. Appellant can best point to the decision made by the Supreme Court of Nebraska in *State ex rel. v. Lincoln Medical College,* 81 Neb. 533, 540, to make clear the issue

of whether or not appellee should be made to disclose and properly explain how appellant's grade was arrived at. A student can and does invest years of time, energy and money yet, when he strives to question and even protest, as any citizen should, the arbitrary, abusive and unreasonable actions of persons, such as the appellee, he is deprived not only of his investment but also of his rights as a citizen. Appellant is informed and believes the appellee acted in a fraudulent manner and that the examination papers he had written were of the caliber so as to show that he was entitled to a grade average for his first year of law school of 63 (permissive status figure set by appellee) or above. Appellant's grade was set at 62.7. In view of appellee's actions and threats, appellant was compelled and justified in asking for an explanation of his grade. Appellee refused to explain the grading of appellant's examination papers. A denial of such explanation can be likened to a denial to any common laborer the right to learn the deductions made from his weekly wages. There is no one who could deny the laborer this right yet, after the student has invested years of struggle and effort to enter his calling or profession, such as the practice of law, his efforts can be made to come to naught by the arbitrary refusal of a person, such as appellee, to explain and give the student full knowledge of his wages which go under the name of "grades." A denial of appeal to judicial process in such a situation constitutes a denial of due process of law and opens the door to others, such as those in the South, who would segregate and eliminate colored Americans from school without fear of judicial review because of their actions.

V.
Constitutional Provisions Involved.

Article IX, Section 9 of the Constitution of the State of California is set forth in full in Appendix B but attention is drawn to the last sentence:

> "The University shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, . . ." (Amendment XIV, United States Constitution.)

VI.
Statement of the Case.

Having complied with all the requirements of admission, in September, 1951, appellant was duly admitted to the professional curriculum at the School of Law of the University of California at Los Angeles, a public institution. Appellant was able to attend said school under the benefits given him as a veteran under the provisions of the G. I. Bill of Rights (38 U. S. C. 703a and Veterans Regulations, Part VIII, compiled thereunder).

Appellant pursued said curriculum as a first year student for the school year ending June, 1952. During said school year, appellant and appellee, L. Dale Coffman, had serious disagreements based upon their differing political and social points of view. Appellee made it clear to appellant that if appellant did not conform to the political and social views of appellee, he appellant, would not be permitted to return to school the next year. Appellant did not change his viewpoint because he believes it of the essence to citizenship, to a law school training and to Democracy for one to adhere to his own beliefs as long as he believes them correct.

During said school year, as the result of appellee's actions and behavior, appellant was subjected to such interference with his studies as being struck from behind with heavy books and of having fear and suspicion being cast toward him by that minority of students who sought to show they conformed to the views of appellee. Appellant made known to appellee, who was also appellant's classroom instructor as well as Dean of the law school, what adverse effects his classroom speeches had created. However, appellee would do nothing to correct the situation but rather demanded that appellant conform to his views.

On or about July 31, 1952, appellee advised appellant he would not be permitted to attend school the following year ostensibly on the ground that his average for the one year of his schooling or 62.7 (three-tenths of a point from permissive status) was unsatisfactory. Appellant is informed and believes this was not the real ground for respondent's (appellee's action but on the contrary said action was due to the disagreements appellant and appellee had on political and social matters. Appellant is further informed and believes that the examination papers he had written were of the caliber so as to show he was entitled to a grade average for the said school year of 63 or above and that appellee gave appellant unfair, unreasonable and fraudulent grades.

Appellant sought an explanation of his grades from appellee but the latter refused to discuss appellant's examination with him and walked out of the office. The appellant has at all times made it absolutely clear that his grades are in question and yet, as was brought out in appellee's answer to the appellant's amended petition, appellee had the effrontery and audacity to destroy those

examination papers most favorable to appellant's case. Appellee did this even in the face of a possible court review. That this shameful action by the appellee was allowed to go unnoticed by the State courts demonstrates a need for Federal jurisdiction to protect appellant's rights

Appellant sought to question appellee's classroom advocacy of the idea of guilt by association or McCarthyism which condemns people en masse and has no respect for individual rights and to compare it in the light of constitutional guarantees but was shouted down and subjected to ridicule by appellee who thereby abused his position of trust. The effect of this episode was shown by a law student who stated in reference to appellant, "you have to watch out for these guys who defend the constitution too loudly."

This summary is not meant to exclude all events which transpired as this is best left to an adequate hearing. However, appellant must point out that in attempting to appeal from the abritrary, abusive and unfair behavior of the appellee, he went to the University Administration; the Governor of the State of California, as President of the Board of Regents; a member of the Board of Regents; and the President of the University. Appellant found he had no protection or appeal. The University Administration vacillated from one position to another; from demanding that appellant take a loyalty oath to promising appellant that the appellee would not "get away with this." The Governor of California, who at that time was the Honorable Earl Warren, referred the matter to the President of the University rather than to the Board of Regents.

While the appellant appealed to the State Governor as President of the Board of Regents, appellant's mother was called in by the District Attorney's Office for questioning like a common criminal and appellant was to hear a defense of Dean Coffman by men in a public office which was supposed to remain unbiased.

Appellant has, time after time, been placed in a position where appeal from the transgressions of the appellee has been made impossible. The regents of the University gave the appellee complete and autonomous control over the school of law and, therefore, appellee is the person who under the rules of said school has the authority to permit the attendance of petitioner (appellant) at the said school. Yet, appellee now seeks refuge in this action in saying that the regents are properly the parties in this case. The Governor of California referred appellant's appeal not to the regents but rather to the President of the University. Furthermore, appellant in demanding admission to the law school was informed by the attorney for the regents that the regents need not be involved and the matter was solely for the University Administration.

Appellant could only hope for redress in the courts and so brought this action in the Superior Court only to be met by the surprise of a summary denial of his petition on December 8, 1953. Appellant made clear in petitioning the court that appellee's real ground for not permitting appellant to attend school the following year was due to the disagreements he and appellee had on political and social matters and that this was in violation of Article IX, Section 9 of the Constitution of the State of California which provides that the University be kept free from and entirely independent of all political or sectarian influence. Appellant in good faith believed Article IX,

Section 9, was designed to keep the University free from political bias and the bigotry of racial discrimination, such as that advocated by appellee, and, hence, was designated to protect freedom of speech and expression.

The Superior Court in summarily denying the petition gave this State constitutional provision no force or effect in law. Its ruling that the court cannot interfere with rules established by the regents of the University brings in question the constitutionality of Article IX, Section 9, insofar as it deprives a citizen of the right of appeal to the courts where there has been an abuse of discretion, bad faith, arbitrary and fraudulent behavior. In the *Board of Education v. Barnette Flag Salute* case, 319 U. S. 624, at page 637, the court stated, "Free public education, if faithful to the ideal of secular instruction and political neutrality will not be partisan or enemy of any class, creed, party or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control or failing that to weaken the influence of the educational system. At page 641, "Compulsory unification of opinion achieves only the unanimity of the graveyard." At page 637, "Boards of Education must perform their functions within the limits of the Bill of Rights." This language describes what force and effect the court might have given Article IX, Section 9, of the California Constitution.

Appellant endeavors to appeal to the District Court of Appeal of the Second Appellate District, Division Three, only to find his case dismissed on a procedural matter in that appeal should have been made from the Superior Court's Minute Order of December 8, 1953. This Minute Order of December 8, 1953, had summarily denied appel-

lant's petition without a hearing and even before the appellee had made a pleading and is therefore insufficient grounds to justify dismissal of appellant's cause. Appellant is placed in the position of having to point out that in his brief on appeal he made clear he was not afforded the minimal of due process. As is stated in *Ohio ex rel. Bryant v. Akron Metro,* 281 U. S. 74, at page 80:

> "As to the due process clause of the 14th Amendment, it is sufficient to say that, as frequently determined by this court, the right of appeal is not essential to due process provided that due process has already been accorded in the tribunal of first instance."

In appellant's case, the tribunal of first instance, the Superior Court of the County of Los Angeles first summarily denied his petition and then in a subsequent order ruled that it could not interfere with the rules as established by the Board of Regents. It can hardly be said that due process was already accorded in the tribunal of first instance in appellant's case. This is still another reason appellant is compelled to appeal to Federal jurisdiction.

VII.

The Questions Are Substantial.

Appellee sought to compel and force the acceptance of his political and social views upon appellant under threat of removal from law school. He carried this threat out by that means available to him; namely, by giving the appellant unfair and fraudulent grades in order to keep him from returning to school. Appellant was at all times, during the year he spent in the law school kept, as a result of appellee's unreasonable demands, in a state of apprehension as to his standing as a student and continuance as such. If appellee may so demand conformance to his

views without question or review by the courts the effect is to deny appellant or any student the U. C. L. A. Law School that freedom of speech and inquiry he must have not only as a law student but as an American citizen.

Appellee made statements wholly contrary to the freedoms found in our legal system and made threats in the classroom which could hardly go unnoticed by any citizen. He advocated and expounded the idea of guilt by association; he boasted how he as a reactionary had obtained a state of autonomy for the law school; he advocated racial segregation and told appellant liberals would be weeded out of law school.

Recently, the United States Supreme Court has outlawed racial segregation and thereby insured the court's protection, if any individual is kept from entering a school because of race or color. Appellant's case is most important in establishing protection for the student after once having been admitted to school in that he must be treated fairly and graded by a system which is both impartial and honest.

The case of *State ex rel. Nelson v. Lincoln Medical College,* 81 Neb. 533, 540, best shows that the question of whether or not a court should extend its protection to the student:

> "All the respondents claimed that each professor had the autocratic right to fix the grade on his examination and that no one had the right to interfere therewith. If respondents are right, a student may pay the college fees, all expenses, and devote his entire energies for four years of study in respondent college, and, if upon final examination she should incur the ill will of one professor, that man could prevent

the student from graduating or receiving his degree . . . this is neither the law of the land or of the institution."

There was great conflict within the University of California as to requiring professors to take a loyalty oath. This case went to the Supreme Court of California. Public debate brought forth the argument that students would be swayed and influenced by professors of doubtful loyalty making the loyalty oath necessary. One way to do away with such a fear of influence by the demagogue is to insure the student freedom of speech and inquiry. If a student may study and question falsehood or demagoguery without fear that he will be unfairly removed from school, it will be very difficult for any extremist of either the right or the left to force his ideas upon the student.

Still another matter of substance which requires appeal to Federal jurisdiction is that fact that G. I. benefits should not be left without the protection of the courts. To say that the court cannot interfere with the rules as set down by the Board of Regents is to deny protection, as in the case of appellant, from arbitrary, abusive and unreasonable behavior. Where a State court denies such protection, the injured party can only turn to the Federal jurisdiction for protection lest he unfairly lose the substantial and considerable benefits granted him under the G. I. Bill of Rights.

A substantial question arises in the fact that the University of California is placed beyond the control of the courts, the legislature or executive branch of Government. It is beyond the practical control of the electorate since regents are appointed for 16 years. To place any board or public body above and beyond the control or jurisdiction

of the courts is unconstitutional. The Superior Court's ruling of February 23, 1954, stated that the court could not interfere with the rules established by the regents of the University, which ruling fails to protect against abuses of such rules. To interpret Article IX, Section 9, of the California Constitution in this manner is unconstitutional as it deprives an individual of the protection of the courts.

Although the suit did not involve a situation such as that of appellant's, a more realistic approach was taken by the court in *Fanning v. University of Minnesota,* 183 Minn. 222, at page 225:

> "Of the effect of the adoption of the Constitution there is no doubt. The people by their constitution chose to perpetuate the Government of the University which had been created by their territorial legislature in a Board of Regents, and the powers they gave are not subject to legislative or executive control; nor can the courts at the suit of a taxpayer interfere with the board while governing the University in the exercise of its granted powers. This does not mean that the people created a corporation or institution which is above the law. The board must keep within the limits of its grant. It is charged with the duty of maintaining a University for the purpose of higher education. This does not mean that the University must have the limitations of colleges of 1851 or 1858. The statute and Constitution intended a University which would grow and develop and undertake activities in the way of research and in other respects not then visualized in the dreams of its founders. There are things which the board may not do. It does not claims otherwise. In a real sense the property of the University is the property of the State, which through its taxpayers is its chief supporter. The board cannot divert it to other than University purposes. It

must govern a University which the territorial statute and the Constitution established and perpetuated. The people gave it in charge of the board and may take it away as they gave it; for, after all, when the theorizing as to the relationship of the board and the University and the State is at an end, the University is the people's University. It does not rule; it serves."

In appellant's case, the regents appointed appellee who went beyond the limits of the University's constitutional grant in demanding conformance to his political and racial points of view. Such behavior as that of appellee is contrary to American concepts of freedom and must be called in question by the courts. The questions involved in appellant's case are, therefore, of substantial Federal importance deserving of a hearing in the Supreme Court of the United States.

Respectfully submitted,

JOSEPH A. COTA,

Appellant, in Propria Persona.

JUL 11 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954

No. 238

JOSEPH A. COTA,

Appellant,

vs.

L. DALE COFFMAN, as Dean of the School of Law, University of California at Los Angeles,

Appellee.

Motion to Dismiss Appeal and Brief of Appellee in Support of Motion to Dismiss Appeal.

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IN THE

Supreme Court of the United States

October Term, 1954

No. .....

JOSEPH A. COTA,

Appellant,

vs.

L. DALE COFFMAN, as Dean of the School of Law, University of California at Los Angeles,

Appellee.

MOTION TO DISMISS APPEAL.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Appellee, L. Dale Coffman, moves the Court as follows:

1. To dismiss the appeal on the ground that the appeal is not within the jurisdiction of the Court because not taken in conformity to statute or to the rules of the Court.

2. To dismiss the appeal on the ground that it does not present a substantial federal question.

3. To dismiss the appeal on the ground that the federal question, if any, sought to be reviewed was not timely raised or expressly passed on.

4. To dismiss the appeal on the ground that the judgment rests on an adequate non-federal basis.

Dated: July 1, 1955.

GEORGE R. RICHTER, JR.,
Counsel for Appellee.

FRANK S. BALTHIS,
GORDON F. HAMPTON,
JOHN E. LANDON,
Of Counsel.

IN THE

Supreme Court of the United States

October Term, 1954

JOSEPH A. COTA,

Appellant,

vs.

L. DALE COFFMAN, as Dean of the School of Law, University of California at Los Angeles,

Appellee.

BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS APPEAL.

Opinions Below.

The appeal to this Court purports to be taken from four judgments of the California Courts, as follows:

1. The original judgment of the Superior Court (Los Angeles County) denying appellant's petition for writ of mandate, the judgment being entered December 10, 1953. This was a minute order. [Clk. Tr. p. 28.]*

2. The Order of the Superior Court (Los Angeles County) Sustaining Demurrer and Denying Writ entered February 23, 1954. [Supp. Clk. Tr. pp. 1-2; Clk. Tr.

*References to the Clerk's Transcript are to the record on appeal taken by appellant from the Order of the Superior Court entered February 23, 1954, to the District Court of Appeal of the State of California.

p. 66-A.] This Order may be an opinion (unreported) and is printed in the appendix hereto.

3. The Order made by the District Court of Appeal December 15, 1954, granting appellee's motion to dismiss the appeal taken from the Order of the Superior Court entered February 23, 1954. (No opinion.)

4. Order made by the Supreme Court of the State of California February 10, 1955, denying appellant's petition for hearing. (No opinion.)

Jurisdiction.

One of the grounds urged for dismissal of the appeal is that this Court has no jurisdiction because the appeal is not taken in conformity to statute nor in conformity to the rules of this Court. The original and decisive judgment of the Superior Court (Los Angeles County) entered December 10, 1953, became final and no appeal was taken therefrom in the California State Courts; the purported appeal to this Court from said judgment entered December 10, 1953, is by two notices of appeal filed over a year after said entry of judgment, one being filed in the Superior Court on April 8, 1955, and the other in the District Court of Appeal on May 2, 1955. The appeal is not timely. (See, 28 U. S. Code, Sec. 2101(c); Rule 11, Supreme Court Rules.)

Statement of the Case.

A brief résumé of the proceedings below follows:

1. The appellant (as petitioner) filed his original petition in the Superior Court (Los Angeles County) for an alternative writ of mandate on September 23, 1953. [Clk. Tr. pp. 1, 66-A.] In accordance with Section 1107, Code of Civil Procedure, State of California, serv-

ice upon appellee (as respondent) was made prior to filing.

2. On September 28, 1953, appellee filed his Memorandum of Points and Authorities in Opposition to Petition for Writ of Mandate pursuant to said Section 1107, Code of Civil Procedure. [Clk. Tr. pp. 16, 66-A.]

3. On December 8, 1953, the Superior Court, by a minute order, denied the petition. The order was entered on December 10, 1953, and provided as follows:

> "Alternative Writ of Mandate Denied." [Clk. Tr. p. 28.]

In making the order denying the writ, the Superior Court explained the basis for its decision in a notice sent to appellant, as petitioner. The explanation of the court indicating the basis for its decision is found as "Appendix A" to the document entitled "Appellant's Points and Authorities in Opposition to Motion to Dismiss", and filed in the District Court of Appeal. The notice referred to is dated December 8, 1953, and reads as follows:

> "Cota vs. Coffman
>
> 619033
>
> Alternative Writ of Mandate Denied.
>
> (See Point I of Respondent's Points and Authorities.)"

Point I of Respondent's Points and Authorities is as follows:

> "Petitioner, having failed to meet the scholastic requirements of the School of Law, has no right or claim to be reinstated." [See Clk. Tr. pp. 16-17.]

4. Forty-eight days after the date of the above order, appellant, on January 25, 1954, filed, in the Superior Court,

an amended petition for a writ of mandate and a notice of application for an alternative writ of mandate. [Clk. Tr. pp. 7, 29, 66-A.]

5. On February 5, 1954, appellee filed a demurrer to the amended petition. [Clk. Tr. p. 31.] Appellant's application and appellee's demurrer were set for hearing and were heard and submitted for decision on February 8, 1954. [Clk. Tr. p. 66-A.]

6. By a written order signed by the judge of the Superior Court and filed on February 23, 1954, the appellee's demurrer was sustained without leave to amend and appellant's application for a writ of mandate was denied. [Supp. Clk. Tr. pp. 1-2; Clk. Tr. p. 66-A; see written opinion, appendix hereto.]

7. On March 17, 1954, appellant filed a notice of appeal to the District Court of Appeal, State of California

> ". . . from the judgment herein entered in said Superior Court on the 23rd day of February, 1954, in favor of the respondent in said action and against petitioner; and from the whole thereof." [Clk. Tr. p. 67, lines 21-26.]

8. On November 22, 1954, the appellee, as respondent, filed in the District Court of Appeal, State of California, a motion to dismiss the appeal of the appellant, and filed in connection therewith a Memorandum of Points and Authorities in support of said motion to dismiss the appeal. Subsequently, appellant filed his points and authorities in opposition to motion to dismiss. The motion to

dismiss was made on procedural grounds and neither appellee's points and authorities nor appellant's points and authorities discusses or refers to any federal question. Said motion was heard and argued on December 15, 1954, and the District Court of Appeal on said date made an order from the Bench dismissing said appeal.

9. On January 23, 1955, appellant filed a petition for hearing in the Supreme Court of the State of California, and appellee filed an answer to said petition on February 2, 1955. Neither the petition nor the answer to the petition filed in the Supreme Court of the State of California presented any federal questions or any question as to the validity of any state statute. The questions presented were entirely procedural, involving principally the construction of Section 472 of the Code of Civil Procedure. The Supreme Court of the State of California denied the petition for hearing February 10, 1955.

10. On April 8, 1955, appellant filed with the Superior Court a notice of appeal to this Court from the judgment or judgments of the Superior Court. On May 2, 1955, appellant filed a notice of appeal to this Court with the District Court of Appeal.

ARGUMENT.

I.

The Court Has No Jurisdiction Because the Appeal Is Not Timely.

(a) The Original Judgment of the Superior Court (Los Angeles County) Entered December 10, 1953, denying Appellant's Petition for Writ of Mandate Was a Final Appealable Judgment Under California Law.

This is clearly decided by the case of *Steen v. Board of Civil Service Commissioners*, 26 Cal. 2d 716, 727-728, 160 P. 2d 816 (1945). In the *Steen* case, the petitioner had filed a petition for an alternative writ of mandate and the court held that a minute order denying the petition was a final and appealable order. The court said (26 Cal. 2d 716, *727:*

> "In the instant case, as before stated, the procedure set forth in section 1107 of the Code of Civil Procedure was followed, under which a copy of the petition for the writ is served on the respondent before an alternative w it is issued and the respondent may file points and authorities in opposition to it. The court then made its minute order denying the petition. Its action was final insofar as appeal was concerned. No further order was contemplated."

The proceedings in the *Steen* case precisely parallels the proceedings taken below in the instant case, and under the above authority the minute order entered on December 10, 1953, was a final appealable order.

The California procedure permitting the respondent in an application for a writ of mandate to file points and authorities in order to obtain a judicial determination of

the legal sufficiency of the petition is explained in the case of *Wilson v. Los Angeles County Civil Service Commission*, 103 Cal. App. 2d 426, 229 P. 2d 406 (1951), where the court states the procedure followed in that case (p. 429):

> "Neither answer nor demurrer to the petition was filed. However, pursuant to section 1107, Code of Civil Procedure, respondents on November 3, 1949, filed their points and authorities in opposition to the amended petition for the writ. On the last named date a minute order was made denying the application for the alternative writ of mandate."

The California court held that the petition might be denied by the trial court "out of hand," and prior to the filing of an answer or demurrer, saying (p. 431):

> "The court did not err in its denial of appellant's petition 'out of hand' for the reason that respondents filed neither an answer nor a demurrer to the petition. Instead, they filed a memorandum of points and authorities under the provisions of section 1107 of the Code of Civil Procedure. Such memorandum is in the nature of a brief filed for the benefit of the court
>
> . . .
>
> "* * * * * * * *
>
> "Repeating the language of *Dare v. Board of Medical Examiners, supra* (21 Cal. 2d 790, 796); 'But a petitioner is not entitled as a matter of right to the issuance of the writ. He must make a proper showing by the allegations of his petition. If his petition fails to state a *prima facie* case entitling him to the issuance of the alternative writ, it is within the power of the court to deny it out of hand."

(b) The Appeal From the Judgment of the Superior Court Entered December 10, 1953, to This Court Is Not Timely.

No appeal from the judgment of the Superior Court entered December 10, 1953, was ever taken in the State courts of California. Under the California Rules on Appeal (see Rules on Appeal printed 36 Cal. 2d 1-43; Rule 2(a)), appellant had sixty days from the entry of judgment in which to take an appeal from the Superior Court to the District Court of Appeal. However, appellant did not appeal from that judgment and it became final and non-appealable under the California law; instead appellant mistakenly attempted to obtain a second judgment in the Superior Court, and when that decision was adverse he, likewise in error, appealed from that judgment.

The appeal taken to this court is by notice of appeal filed in the Superior Court on April 8, 1955, and by notice of appeal filed in the District Court of Appeal on May 2, 1955, both more than a year after the judgment of the Superior Court was entered on December 10, 1953. The appeal taken to this court is not timely under the provisions of Section 2101(c) of Title 28 United States Code; see, also, Rule 11, paragraph 3, Supreme Court Rules.

(c) The Original Judgment of the Superior Court, Final and Unappealed From, Determined the Law of the Case, and the Issues of Law Became Res Judicata.

In view of the fact that the judgment of the Superior Court of December 10, 1953, became final with no appeal therefrom taken in the state courts and with said judgment constituting a clear determination of the legal sufficiency of appellant's petition for writ of mandate, the issues in the case became *res judicata* and the appeals from other orders or judgments in the state courts are of no legal consequence.

II.

There Are No Federal Questions Involved in This Appeal.

Under Section 1257(2) of Title 28, United States Code, a final judgment rendered by the highest court of a state may be reviewed by appeal where there is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

In all stages of this case in the California state courts, there were no questions raised or presented involving the validity of any statute of California on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

Appellant's petition for writ of mandate [Clk. Tr. pp. 1-6] presented no questions as to any state statute being repugnant to the Constitution, treaties or laws of the United States, nor did appellee's memorandum of points and authorities in opposition to petition for writ of mandate [Clk. Tr. pp. 16-27]. Thus, there was no such issue presented by the pleadings. Likewise, neither the amended petition for writ of mandate [Clk. Tr. pp. 7-15] nor appellee's demurrer to amended petition for writ of mandate [Clk. Tr. pp. 31-33] presented any such question with reference to a state statute. It therefore appears that no federal question was involved in the pleadings on file in the case below, and both judgments of the Superior Court (Dec. 10, 1953, and Feb. 23, 1954) were decided upon the legal sufficiency of appellant's pleadings.

In the District Court of Appeal to which appellant appealed from the judgment of the Superior Court of February 23, 1954, appellee, as respondent, made a motion

to dismiss the appeal on procedural grounds, and as discussed both in appellee's motion to dismiss and in the points and authorities in support thereof, and also in appellant's points and authorities in opposition to motion to dismiss, no federal question was presented, nor was there drawn in question any statute of the State of California claimed to be repugnant to the Constitution, treaties or laws of the United States. The District Court of Appeal clearly did not pass on any federal question.

Likewise, in the Supreme Court of the State of California, as shown by the petition for hearing and by the answer to petition for hearing, there was no federal question presented nor was any state statute challenged on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and, clearly, the decision of the highest court of the State of California in denying the hearing could not be said to be one holding in favor of the validity of any statute so challenged or drawn into question.

The jurisdictional requirement that there be drawn in question, before the highest state court, the validity of a state statute on federal grounds, before the United States Supreme Court may exercise jurisdiction of appeal is satisfied only if the record shows that the question of validity of the state statute as construed and applied has either been presented for decision to the highest court or has been decided by it and that its decision was necessary to the judgment.

Wilson v. Cook, 327 U. S. 474, 66 S. Ct. 663, 90 L. Ed. 793 (1946);

Wall v. Chesapeake & O. Ry. Co., 256 U. S. 125, 41 S. Ct. 402, 65 L. Ed. 856 (1921).

III.

Any Federal Questions Involved in This Appeal Were Not Timely Raised or Expressly Passed on by the California Courts.

As pointed out under Point II, there were no federal questions raised by the pleadings in the trial court, and obviously the trial court did not pass upon any federal questions. Likewise, appellee did not raise any federal questions nor did he draw into question any state statute as being repugnant to the Constitution, treaties or laws of the United States in the proceedings before the District Court of Appeal or in the Supreme Court of the State of California. Having failed completely to raise any federal question whatsoever in the state courts, it would appear that no appeal could be taken under Section 1257(2) of Title 28, United States Code.

In *Edelman v. California*, 344 U. S. 357, 73 S. Ct. 293, 97 L. Ed. 387 (1952), it is stated (344 U. S. 357, *358-9*:

> "It is clear that this Court is without power to decide whether constitutional rights have been violated when the federal questions are not seasonably raised in accordance with the requirements of state law. *Hulbert v. Chicago*, 202 U. S. 275, 50 L. ed. 1026, 26 S. Ct. 617 (1906); *Mutual Life Ins. Co. v. McGrew*, 188 U. S. 291, 308, 47 L. ed. 480, 484, 23 S. Ct. 375, 63 L. R. A. 33 (1903). Noncompliance with such local law can thus be an adequate state ground for a decision below."

See also:

French v. Hopkins, 124 U. S. 524, 8 S. Ct. 589, 31 L. Ed. 536 (1887).

IV.

The Judgment of the California Court Rests on an Adequate Non-Federal Basis.

The matters decided in the Superior Court of the State of California related entirely to the legal sufficiency of the pleadings in connection with an application for a prerogative writ. No federal question was raised by the pleadings. Thereafter in the District Court of Appeal and in the Supreme Court the questions presented were entirely procedural and involved the simple question as to whether appellant, as petitioner, had appealed correctly from the right judgment and whether appellant had the right "as of course" to file an amended petition for a writ of mandate after there had been a judicial decision by final judgment on the original petition filed by him. The procedural questions involved in local law will not be reviewed by this Court.

Edelman v. California, 344 U. S. 357, 73 S. Ct. 293, 97 L. Ed. 387 (1952);

French v. Hopkins, 124 U. S. 524, 8 S. Ct. 589, 31 L. Ed. 536 (1887).

V.

Even if Treated as a Petition for Writ of Certiorari, No Title, Right, Privilege or Immunity Under Federal Law Was Claimed by Appellant.

Although appellant's status as a veteran was mentioned in his original petition for writ of mandate, this was completely immaterial to the right attempted to be alleged. Deficiency in scholarship is not involved under the statute providing for veteran's compensation while obtaining vocational rehabilitation.

Further, no right, privilege or immunity was claimed either in the pleadings or at any other stage of the state court proceedings. No right or claim in any way relating to or connected with segregation is involved in this case. And none was ever claimed in the courts below.

Conclusion.

Because (1) the appeal taken by appellant is not within the jurisdiction of the court, (2) the appeal taken was not timely, (3) there is no federal question involved, (4) no federal questions were presented or passed upon by the California courts, and (5) the judgment appealed from rests on an adequate non-federal basis, it is respectfully submitted that the appeal to this court should be dismissed.

Dated: July, 1955.

GEORGE R. RICHTER, JR.,
Counsel for Appellee.

FRANK S. BALTHIS,
GORDON F. HAMPTON,
JOHN E. LANDON,
Of Counsel.

APPENDIX.

In the Superior Court of the State of California in and for the County of Los Angeles.

Joseph A. Cota, Petitioner, vs. L. Dale Coffman, as Dean of the School of Law, University of California at Los Angeles, Respondent. No. 619,033.

ORDER SUSTAINING DEMURRER AND DENYING WRIT.

The petition herein was served on September 22, 1953 and filed the next day.

On September 28, 1953 the Respondent serv d and filed his memorandum of points and authorities in opposition to the petition.

On December 8, 1953 the Court entered its order denying the alternative writ of mandate.

This was an appealable order. No appeal was taken. Therefore the order became final on February 6, 1954.

On January 25, 1954 Petitioner filed an amended petition and served and filed notice of the hearing thereof on February 8, 1954.

There is no essential difference between the original petition and the amended petition.

The petition shows that Petitioner did not meet the scholastic requirements of the school, and his continuance therein as a student was a matter of discretion with the Dean. The Court can not interfere with rules established by the Regents of the University.

Respondent has demurred to the petition, moved to strike portions of it and has filed an answer.

Petitioner has demurred to the answer, moved to strike portions of it and has filed a replication to Respondent's answer.

It is unnecessary to consider any of the pleadings other than the petition and demurrer thereto.

The demurrer is sustained, without leave to amend, and the petition for a writ of mandate is denied.

February 23, 1954.

ARNOLD PRAEGER,
Judge.

Filed February 23, 1954. HAROLD J. OSTLY, *County Clerk.* By J. E. Rose, Deputy. (Endorsed.)

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IN THE

Supreme Court of the United States

October Term, 1955

No. 238

JOSEPH A. COTA,

Appellant,

vs.

L. DALE COFFMAN, as Dean of the School of Law, University of California at Los Angeles,

Appellee.

Supplemental Points and Authorities in Support of Appellant's Jurisdictional Statement.

I.

The Summary Action of the Superior Court Came as a Surprise, Was Not Supported by Precedent, Deprived Appellant of an Adequate and Reasonable Opportunity to Present His Case, and Cannot, Therefore, Rest Upon Adequate Federal Grounds.

That the summary action of the Superior Court took appellant by surprise and could not have been reasonably anticipated can best be shown in the fact that the law is far from settled in California regarding protection of the student. Although there is law to support appellant's position, there is no case in California comparable to

that of *State, ex rel. Nelson v. Lincoln Medical College,* 81 Neb. 533. As is stated in *Saunders v. Shaw,* 244 U. S. 317, 320.

> "The defendant was not bound to contemplate a decision of the case before his evidence was heard and therefore was not bound to ask a ruling or to take other precautions in advance. The denial of rights given by the Fourteenth Amendment need not be by Legislation."

This is an important factor to consider because at no time did the appellant wish to convey the idea that he failed to meet the scholastic requirements of the school of law. He most urgently insists he was entitled to passing grades. It is just that the law is not clear in California as to what procedure a student should follow in obtaining a review of his examinations. It is ridiculous to expect him to have a panel of legal experts ready to swear that appellee was dishonest in grading especially when the appellee, by his own misconduct, has made a review of the examination papers and an explanation of the grading system used impossible. To make this point clear, appellant must point out that the problem is comparable to that involving a negative averment. As is stated in *United States v. Denver and Rio Grande Railroad Company,* 191 U. S. 84, 92:

> "It is a general rule of evidence, noticed by the elementary writers upon that subject, 1 Greenl. Ev. Sec. 79, 'That where the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true, unless disproved by that party.' When a negative is averred in pleading, or plaintiff's case depends upon the establishment of a negative, and the means of proving the fact are equally within the control of

> each party, then the burden of proof is upon the party averring the negative; but when the opposite party must, from the nature of the case, himself be in possession of full and plenary proof to disprove the negative averment, and the other party is not in possession of such proof, then it is manifestly just and reasonable that the party which is in possession of the proof should be required to adduce it; or upon his failure to do so, we must presume it does not exist, which of itself establishes a negative."

In appellant's case, the court should have realized that the subject matter in question, namely, appellant's examination papers, was in the hands of the opposition or appellee. From the nature of the case, the appellee was in sole possession of full and plenary proof to disprove appellant's contention that he had received a grade of 63 or above. Appellant, as a student, is at an obvious disadvantage and it was, therefore, manifestly just and reasonable that appellee, who was in possession of the proof or examination papers should be required to adduce it; or upon his failure to do so, it was reasonable for the court to presume appellant had in fact received satisfactory grades, especially in the face of appellee's threats toward appellant.

It was sufficient, if not necessary, because of appellant's great disadvantage, for the appellant to state he was informed and believed his grades to be of the caliber so as to show he was entitled to a grade average of 63 or above. Since those examinations were held in question by the appellant and he pointed out to the court that appellee had threatened appellant with removal from law school for not conforming to his political and social points of view, it was manifestly just and reasonable that appellee be made to show appellant's examination papers and wherein

they were deficient, if at all. This should have been done else the appellee make a mockery of the law by destroying those examination papers most favorable to appellant's case as he has stated he has done in his answer to the appellant's amended petition. He has also made a mockery of the law by saying in his Memorandum of Points and Authorities in support of his demurrer that appellant does not show what experts he has to show he passed his examinations; a statement which points up the fact that the California courts allowed appellee to take advantage of his own misconduct.

The court in *State, ex rel. Nelson v. Lincoln Medical College,* 81 Neb. 533, not only took judicial notice of the fact that the defendants had destroyed the examination papers but regarded the fact that the petitioner maintained she had passed her examinations as sufficient and did not require her to come forward with a panel of experts to prove this. The Nebraska Court obviously realized how difficult such a requirement was since the subject matter in question was in the possession of the defendant.

II.

Federal Questions Were and Are Set Up and Claimed.

Appellant explicitly set up, claimed and brought to the attention of the state court the fact that he would lose his veteran's educational benefits as the result of the arbitrary, unreasonable, bad faith and abuse of the appellee's discretion. Veteran's benefits are provided by an Act of Congress (38 U. S. C. 703a and part VIII of Veteran's Regulations, compiled thereunder). Congress, in enacting this federal legislation, certainly did not mean its provisions could be made meaningless by such behavior and misconduct as that of the appellee.

Another important ground for appellant's action stemmed from the demand by appellee that appellant conform to his political and social points of view as a condition of remaining in law school. This needs no special words and phrases to be understood as a clear interference and violation of freedom of speech and expression.

> "It is a necessary and well settled rule that the exercise of jurisdiction by this court to protect constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the right." (*Rogers v. Alabama,* 192 U. S. 226, 230.)

As is stated in *Green Bay and Mississippi Canal Company v. Patten Paper Company,* 172 U. S. 58, 67:

> "But no particular form of words or phrases has ever been declared necessary in which the claim of federal rights must be asserted. It is sufficient if it appears from the record that such rights were specially set up or claimed in the state court in such a manner as to bring it to the attention of that court."

Also, at page 68 of this case:

> "As then in its cross-complaint, the Canal Company explicitly set up and claimed, as the foundation of its alleged rights, the acts of Congress and the transactions between the United States and the Canal Company . . . and as, in the final judgment, the Supreme Court of Wisconsin necessarily held adversely to these claims of federal right, we hold that the motion to dismiss for want of jurisdiction must be overruled, and that it is our duty to inspect the record in order to see whether there was error in the rulings of the court below."

III.

This Court Has Jurisdiction Regardless of the Rulings of the District Court of Appeal of the State of California and the California Supreme Court.

> "Should the higher court of the state decline to exercise its authority, the judgment of the intermediate court rather than the refusal by the higher court is the judgment reviewable under 1257."
>
> *Sulivan v. Texas,* 207 U. S. 416, 422.

In appellant's case, the higher state court for purposes of this appeal is the Superior Court since the federal questions were timely raised therein. Where the trial court's judgment is final in its federal aspects but appealable in its non-federal aspects, the Supreme Court can directly review the federal portion of that judgment following disposition of the non-federal issues by the state Appellate Court.

Kentucky v. Powers, 201 U. S. 1, 37, 38.

IV.

The United States Supreme Court Can Ultimately Determine the Law of This Case.

It cannot be reasonably argued that the Minute Order of December 8, 1953, summarily denying appellant's alternative Writ of Mandate determined the law of appellant's case before the United States Supreme Court. This argument is dispensed with by the case of *Davis v. O'Hara,* 266 U. S. 314, 321:

> "The ruling that the former decision of the state court became the law of the case does not affect the power of this court to reexamine the question."

It is also stated in *Grays Harbor Logging Company, et al. v. Coats Fordney Logging Company,* 243 U. S. 251, 256:

"When the litigation in the state courts is brought to a conclusion, the case may be brought here upon the federal question already raised as well as any that may be raised hereafter; for although the state courts, in the proceedings still to be taken, presumably will feel themselves bound by the decision heretofore made by the Supreme Court . . . As laying down the law of the case, this court will not be thus bound."

V.

The Student Must Be Allowed to Study in an Atmosphere of Academic Freedom, Free of Undue Influence.

As appellant pointed out in his Opening Brief on Appeal to the District Court of Appeal of California, a state of affairs wherein a law student may be deprived of his education and the opportunity to enter his chosen profession by reason of non-scholastic disagreement with the views of his professors is not one which is conducive to a competent, courageous, intelligent bar of the future. So too, a state of affairs wherein a student must give up his principles and beliefs so as to placate the appellee or suffer the consequences of having fear and suspicion cast upon him can hardly be said to create an atmosphere of freedom for the student and American citizen. Appellee's threats and unreasonable demands that appellant conform to his political and social points of view made the first year of law school a tremendous ordeal and strain for appellant.

"Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned."

Sweatt v. Painter, 339 U. S. 629, 634.

Summary.

The rulings of the state courts rest in error and should not be allowed to hold sway on the basis of an inadequate procedural matter (1) appeal taken by the appellant is within the jurisdiction of this court; (2) it was timely taken; (3) the judgment rests upon an inadequate non-federal basis and appellant was not afforded a reasonable, adequate, and just opportunity to be heard and present his case in court.

Respectfully submitted,

JOSEPH A. COTA,

Appellant, in Propria Persona.

No. 238. COTA *v.* COFFMAN. Appeal from the Supreme Court of California. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied. THE CHIEF JUSTICE took no part in the consideration or decision of this case. Appellant *pro se*. *George R. Richter, Jr.* and *Gordon F. Hampton* for appellee.

